IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, Plaintiff, v. ENRON CORPORATION, ANDREW S. FASTOW, KENNETH L. LAY and JEFFREY J. SKILLING, Defendants.	Civil Action No. 01-CV-3624 (Consolidated) Judge Lee H. Rosenthal

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR APPOINTMENT OF LEAD PLAINTIFF AND APPROVAL OF LEAD COUNSEL

I. PRELIMINARY STATEMENT

A. Background

Beginning October 16, 2001, Enron Corporation ("Enron" or the "Company") made the first of a series of negative disclosures concerning the Company's financial results and certain related-party dealings between Enron and entities owned and controlled by its Chief Financial Officer, Andrew S. Fastow ("Fastow"). These disclosures included a $618 million loss for the third quarter of 2001, multi-million dollar asset write-downs, and a $1.2 billion reduction in shareholder's equity. During the days and weeks that followed, Enron issued additional negative disclosures concerning Mr. Fastow and various accounting improprieties at Enron that culminated, on November 8, 2001, with the Company restating its earnings for fiscal years 1997

through the third quarter of 2001, thereby reducing its previously reported net income for this four-year period by approximately $586 million, or almost 20%.

These announcements have led to one of the most dramatic collapses in the history of corporate America. Beginning on October 16, 2001, for example, Enron's stock price over the next week lost more than one-half of its value, dropping from $33.84 to close on October 24 at $16.41 on extraordinarily high volume of 75 million shares. The initial decline wiped out $13 billion in Enron's market capitalization.[1] The stock price, however, continued its dramatic decline following the subsequent additional negative disclosures and has traded as low as $0.25 on November 30, 2001, representing a total loss of Enron market capitalization of more than $25 billion since the initial disclosure on October 16, 2001 and an astounding $68 billion since Enron's stock traded at a high of $90 per share in September 2000. Enron filed for bankruptcy protection on December 2, 2001 and today there is grave doubt the Company's 650 million shares of publicly traded common stock will retain any value whatsoever.

Approximately 45 class action or derivative complaints have been filed since October 22, 2001. The complaints uniformly assert claims arising out of alleged violations of the Federal securities laws, including §§ 10(b), 20(a) and 20A of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder.[2] Each of these complaints alleges that Enron and its officers and management named as individual defendants disseminated materially false and misleading financial statements to investors which artificially inflated the price of Enron securities during

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1/ Based on 764 million shares outstanding as reported in Enron's Form 10-Q for the third quarter ended September 30, 2001.

2/ Certain of the complaints also allege violations of §11 of the Securities Act of 1933.

the proposed class period.[3] In general, each of the Complaints alleges that defendants caused the Company's financial statements to be materially false and misleading for the same reasons.

The various complaints also allege that the individual defendants wrongfully obtained profits of hundreds of millions of dollars from the sale of their shares of Enron stock during the Class Period while in possession of material non-public information.

Complaints filed or amended since Enron's November 8, 2001 restatement of its financial results for fiscal years 1997 through the third quarter of 2001 also named as a defendant the Company's outside auditor, Arthur Andersen & Co. ("Andersen"), which audited and issued clean opinion letters for the Company's original financial statements filed with the Securities Exchange Commission and disseminated to the investing public for Enron's fiscal years 1997, 1998, 1999 and 2000.[4]

Based on the proposed class period of October 19, 1998 through November 27, 2001, the NYC Funds' losses as a result of defendants' misconduct are approximately $109 million, resulting from the purchase of more than 2.4 million shares of Enron common stock in the open market, as well as purchases of more than $30 million worth of Enron bonds.[5] The NYC Funds

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3/ The Class Period in many of the cases on file vary slightly depending on whether they were filed prior to or after Enron's restatement of its financial statements for fiscal 1997 through the third quarter of 2001. All of the cases filed allege a class period which is either identical to or included within the proposed October 19, 1998-through-November 27, 2001 Class Period. It is presumed that the proposed class period will be alleged in a single consolidated amended complaint, since the actions have already been consolidated.

4/ In light of Enron's December 2, 2001 bankruptcy filing, actions against the Company have been automatically stayed pursuant to the provisions of 11 U.S.C. §362(a). Certain of the actions on file do not name Enron as a defendant. The NYC Funds propose that the actions proceed against Andersen and the individual defendants and that a Lead Plaintiff be appointed to prosecute those claims.

5/ Damages under Section 10(b) are calculated based upon the difference between the purchase price and the "true value" of the securities or if the shares were sold, the difference

losses are itemized on Schedule A annexed hereto. As a matter of quantification, the NYC Funds have sustained significant losses, giving the Funds the requisite stake in these actions and otherwise satisfying the requirements of Rule 23 of the Federal Rules of Civil Procedure; the NYC Funds, therefore, are presumptively entitled to serve as the lead plaintiff who will run the litigation.

More significantly, as a matter of qualification, the NYC Funds are best qualified to serve as Lead Plaintiff. Indeed, the NYC Funds have unique credentials to act as Lead Plaintiff. The NYC Funds acted as a Lead Plaintiff in the Cendant litigation, which resulted in a settlement of more than $3 billion, the single largest recovery ever obtained in a securities class action. In re Cendant Corp. Litigation, 264 F.3d 201 (3rd Cir. 2001). Moreover, during the course of the Cendant case, the NYC Funds demonstrated their assiduous commitment to their fiduciary responsibilities to the class. Not only did the NYC Funds negotiate a competitive fee structure at the outset of the case; through the NYC Funds' vigorous and successful appeal to the United States Court of Appeals for the Third Circuit, a lead plaintiff's right to select counsel and negotiate attorneys fees was firmly established. As a result of the NYC Funds' zealous

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between the purchase price and the sales price. Under Section 21D(e) of the Exchange Act, the true value can be approximated by using the average of the closing prices during the 90-day period following the corrective disclosure (the "retention value"). As 90 days have not passed since Enron's corrective disclosure on November 27, 2001 (the end of the proposed Class Period, see note 3, supra), the mean post-November 27 closing prices to date of $0.66 per share of common stock and $0.212 per face amount of debt securities were used to compute the losses suffered on the NYC Funds' securities purchases. These retention figures are subject to change after the expiration of the 90-day period. For purposes of computing Section 10(b) damages, in-and-out transactions are included in the calculation with class period sales netted against pre-class period holdings and class period purchases on a first-in, first-out (FIFO) basis. See, e.g., In re Waste Management, Inc. Securities Litigation, 128 F. Supp. 2d 401 (S.D. Tex. 2000); Aronson v. McKesson HBOC, Inc., 79 F. Supp. 1146 (N.D. Cal. 1999). Under Section 21D, sales after November 27, 2001 will also net out purchases on a FIFO basis, but recoverable damages cannot exceed the difference between the purchase price and the mean post-disclosure trading price for the period ending on the date that the security is sold.

representation of the interests of the class, at least $75 million of attorneys' fees will be saved for the members of the Cendant class of investors. Id. at 271-286.

The NYC Funds will devote the same energy and oversight to the prosecution of this case. They have retained highly qualified and experienced attorneys who have agreed to an eminently reasonable fee retainer, the result of a competitive arm's-length bargaining process. Moreover, the NYC Funds have the benefit of sophisticated and experienced litigators from the office of the Corporation Counsel of the City of New York as well as from the New York City Comptroller's Office who will participate in and oversee the litigation. For those reasons, as amplified below, the NYC Funds are precisely the type of investor Congress hoped would step forward to prosecute securities class actions actively on behalf of public investors who have been defrauded. The NYC Funds are the most qualified and should be appointed Lead Plaintiff.

A. The NYC Funds

The NYC Funds consist of five actuarial pension systems of New York City, consisting of the New York City Employees' Retirement System ("NYCERS"), the New York City Teachers' Retirement System ("NYCTRS"), the Police Department Pension Fund ("PDPF"), the Fire Department Pension Fund ("FDPF"), the Board of Education Retirement System ("BERS"), and four variable supplement funds: the New York City Police Officers' Variable Supplements Fund, the New York City Police Superior Officers' Variable Supplements Fund, the New York City Fire Officers' Variable Supplements Fund, and the New York City Firefighters' Variable Supplements Fund. See Declaration of Phyllis Taylor ("Taylor Declaration"), ¶¶ 3-9. The NYC Funds had over $98.9 billion in assets as of November 30, 2001, and as of June 30, 1997, had approximately 234,000 retired members and 313,000 active members. Id. ¶ 3. As noted above,

the NYC Funds purchased more than 2.4 million shares of Enron common stock and more than $30 million in face amount of Enron bonds during the Class Period. See Schedule A and NYC Funds certifications, Exh. A to the Taylor Declaration.

NYCERS, established under Section 12-102 of the Administrative Code of the City of New York, provides benefits to all New York City employees who are not eligible to participate in FDPF, PDPF, BERS, or NYCTRS. Id. at ¶4.

NYCTRS maintains two retirement programs, the Qualified Pension Plan ("QPP") and the Tax-Deferred Annuity Plan ("TDA"). The QPP, established pursuant to Section 13-502 of the Administrative Code of the City of New York, provides pension benefits to those with regular appointments to the pedagogical staff of the Board of Education. The TDA, established pursuant to Internal Revenue Code Section 403(b), provides a means of deferring income tax payments on voluntary tax-deferred contributions. Id. ¶5.

PDPF, created pursuant to New York Local Law 2 of 1940, provides pension benefits for full-time uniformed employees of the New York City Police Department. Id. ¶7.

FDPF, established pursuant to Section 13-301 of the Administrative Code of the City of New York, provides pension benefits for full-time uniformed employees of the New York City Fire Department. Id. ¶6.

BERS provides pension benefits to, among others, non-pedagogical employees of the New York City Board of Education. Id. ¶8.

The New York City Police Superior Officers' Variable Supplements Fund ("PSOVSF"), the New York City Police Officers' Variable Supplements Fund ("POVSF"), the New York City Firefighters' Variable Supplements Fund ("FFVSF"), and the New York City Fire Officers' Variable Supplements Fund ("FOVSF") were established, pursuant to enabling State legislation,

to provide certain retirees of the New York City Police Department and the New York City Fire Department with fixed supplemental benefits from variable supplement funds. Id. ¶9.

The Comptroller of the City of New York is the investment manager of each of the funds that comprise the NYC Funds. Id. ¶ 10. In that capacity, he establishes substantially similar investment guidelines for the investments made for each of the NYC Funds. Id. The Office of the Corporation Counsel of the City of New York the ("Law Department") serves as counsel to the NYC Funds and will provide direction and monitoring of this litigation on behalf of the NYC Funds. Id. ¶ 13.

Quite apart from the substantial damages suffered by the NYC Funds, which gives them a significant stake in the outcome of this litigation, the NYC Funds are the most appropriate entities to act as lead plaintiff for the class in this case for three reasons: first, the NYC Funds have a demonstrated history of achieving outstanding results in the best interests of the class and have unique experience to lead a case of this magnitude; second, in accordance with the underlying purpose of the Private Securities Litigation Reform Act ("PSLRA"), the NYC Funds competitively selected highly qualified and experienced attorneys and negotiated a low fee structure with them; third, the NYC Funds at this time are engaged in no other securities class actions[6] and are therefore able to dedicate all of their resources and experienced personnel to oversee their interests in this litigation and to ensure that institutional concerns are not overshadowed by the concerns of class counsel. See Declaration of Leslie Conason, ¶¶ 3-12 . The NYC Funds' counsel, Lowey Dannenberg Bemporad & Selinger, P.C. ("Lowey Dannenberg") and Lieff Cabraser Heimann & Bernstein LLP ("Lieff Cabraser") were chosen

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6/ The only matter still pending in the Cendant litigation is the resolution of fee applications upon remand to the district court.

through a competitive selection process, as described in detail at ¶¶ 13-16 of the Conason Declaration. In choosing counsel to represent the NYC Funds, the principal goal was to find counsel of the highest quality who were amenable to the high degree of involvement in litigation strategy sought by the NYC Funds. In order to oversee this litigation and outside counsel, the NYC Funds will rely on a team of experienced litigators from the Law Department as well as lawyers with securities litigation experience in the Office of the New York City Comptroller, the investment manager for the NYC Funds. Each member of this team is prepared to devote substantial time to the conduct of the litigation to ensure that the case is client-driven and litigated vigorously on behalf of the class. Id., ¶¶ 2-12, 17.

In this case, the Law Department has entered into a retainer agreement with counsel which provides that this team will receive, review and approve all significant pleadings before they are filed with the court. It will be apprised of all court appearances, settlement discussions and other important meetings and intends to send representatives to all such events. The team will review counsel's time and expense reports on a monthly basis, as well as similar reports for any other attorneys or experts hired. The team has already had discussions and strategy meetings with counsel in connection with the commencement of this lawsuit and this motion. This is the type of oversight Congress envisioned when it passed the PSLRA to curb "lawyer-driven" securities fraud class actions and the phenomenon of plaintiffs who serve as figureheads. Id., ¶ 16; Taylor Decl. ¶¶ 14-17.

II. ARGUMENT

A. The NYC Funds Should Be Appointed Lead Plaintiff

1. The Procedure Required By the PSLRA For the Appointment of Lead Plaintiff

The PSLRA establishes a procedure for the appointment of "Lead Plaintiff" in "each private action arising under the [Securities Act of 1933 or the Securities Exchange Act of 1934] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure." § 21D(a)(1). The PSLRA establishes a presumption in determining the member or members of the class who is or are the "most adequate plaintiffs":

> [T]he court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that --
>
> > (aa) has either filed the complaint or made a motion in response to a notice . . .
> >
> > (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and
> >
> > (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

PSLRA § 21D(a)(3)(B)(iii)(I). As set forth below, the NYC Funds are the "most adequate plaintiff."

2. The NYC Funds Satisfy The "Lead Plaintiff" Requirements of the Act

a. The NYC Funds Have Complied With The Procedural Requirements of the Act

The NYC Funds' motion has been filed within the time frame established by the PSLRA.[7] The NYC Funds' motion contains the required certifications setting forth, inter alia, the NYC Funds' transactions in Enron securities during the class period and indicating that the NYC Funds have reviewed complaints filed in the Actions and are willing to serve as a representative party on behalf of the Class. See Certifications.[8] In addition, the NYC Funds have selected and retained competent and experienced counsel, as set forth in counsel's resumes. See Lowey Dannenberg and Lieff Cabraser resumes, attached as Exh. A and B to Selinger Decl. As noted in their resumes, Lowey Dannenberg and Lieff Cabraser have developed excellent reputations for successfully prosecuting federal securities law claims.

b. The NYC Funds Have The Requisite Stake in the Relief Sought

The PSLRA was intended to encourage institutional investors like the NYC Funds to take up the mantle and serve as lead plaintiff. In re Waste Management, Inc. Securities Litigation, 128 F. Supp. 2d 401, 411 (S.D. Tex. 2001) (Judge Harmon); Aronson v. McKesson HBOC, 79 F. Supp. 2d at 1153 ("the framers of the [PSLRA] envisioned that established institutional investors

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7/ The first action against Enron based on its disclosures of related party transactions was on October 22, 2001. The PSLRA requires motions for appointment of Lead Plaintiff to be filed within 60 days, i.e., by December 21, 2001.

8/ The NYC Funds' Certifications are annexed to the Taylor Declaration. The Declarations of Phyllis Taylor, Leslie Conason, and Neil L. Selinger are submitted herewith.

would take control of securities litigation"). See House Conference Report No. 104-369, 104th Cong. 1st Sess. at 34 (1995) (the Act was intended "to increase the likelihood that institutional investors will serve as lead plaintiffs" because, among other reasons, institutional investors and other class members with large amounts at stake "will represent the interests of the plaintiff class more effectively than class members with small amounts at stake") (reprinted at 1995 USCC&AN 730, 733).

The NYC Funds are uniquely qualified to serve as the lead plaintiff. Indeed, they are precisely the type of investor Congress hoped would step forward to prosecute class actions actively on behalf of public investors who have been defrauded. The NYC Funds are presumptively the most adequate plaintiff because of the size of their financial interest in the relief sought by the Class and their other qualifications which demonstrate their superior adequacy.

Moreover, "through the PSLRA, Congress has unequivocally expressed its preference for securities fraud litigation to be directed by large institutional investors," Gluck v. CellStar Corp., 976 F. Supp. 542, 548 (N.D. Tex. 1997). Accord Aronson, 79 F. Supp. 2d at 1152-53; Waste Management, 128 F. Supp. 2d at 411; Ravens v. Iftikar, 174 F.R.D. 651, 661 (N.D. Cal. 1997) ("the Reform Act affords large, sophisticated institutional investors a preferred position in securities class actions . . . Congress sought to eliminate figurehead plaintiffs who exercise no meaningful supervision of litigation").

The legislative history of the Act demonstrates that it was intended to encourage institutional investors, such as the NYC Funds, to serve as Lead Plaintiff. As the Statement of Managers for the Reform Act noted:

> The Conference Committee seeks to increase the likelihood that

institutional investors will serve as lead plaintiffs by requiring courts to presume that the member of the purported class with the largest financial stake in the relief sought is the "most adequate plaintiff."

The Conference Committee believes that . . . in many cases the beneficiaries of pension funds -- small investors -- ultimately have the greatest stake in the outcome of the lawsuit. Cumulatively, these small investors represent a single large investor interest. Institutional investors and other class members with large amounts at stake will represent the interests of the plaintiff class more effectively than class members with small amounts at stake.

House Conference Report No. 104-369, 104th Cong. 1st Sess. at 34 (1995).

In order to promote the statutory goal of eliminating the problems inherent in attempting to supervise a litigation through collective action, "it makes sense that one client will provide more control than a disjointed group concocted by plaintiffs' counsel – even if the group consists of institutional investors." Aronson, 79 F. Supp. 2d at 1153.[9] Under these circumstances, the NYC Funds satisfy all the PSLRA's prerequisites for appointment as Lead Plaintiff in these class actions and should be appointed as Lead Plaintiff pursuant to PSLRA § 21D(a)(3)(B)(iii).

c. The NYC Funds Otherwise Satisfy the Requirements of Rule 23

In addition to satisfying the requirements set forth above, a lead plaintiff must fulfill the requirements of Rule 23 of the Federal Rules of Civil Procedure. Rule 23(a) provides that a party may serve as a class representative only if the following four prerequisites are met:

> (1) the class is so numerous that joinder of all members if impracticable, (2) there are questions of law or fact common to the

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9/ The court in Aronson also recognized that although the NYC Funds "are separate entities... they are essentially one person for purposes of the Reform Act, because they are all under the jurisdiction of [the] New York City Comptroller's Office, and are represented in their dealings with private counsel through one 'in-house counsel', The Corporation Counsel of the City of New York." Id. at 1157, n. 11.

> class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

Only two of the four prerequisites to class certification, typicality and adequacy, directly address individual characteristics of class representatives. Consequently, in deciding a motion to serve as lead plaintiff, the Court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a), and defer examination of the remaining requirements until the lead plaintiffs move for class certification. Waste Management, 128 F. Supp. 2d at 411; Switzenbaum v. Orbital Sciences Corp., 187 F.R.D. 246, 248-49 (E.D. Va. 1999).

The typicality requirement of Rule 23(a)(3) is satisfied "where the named plaintiffs' claims arise 'from the same event or course of conduct that gives rise to the claims of other class members and the claims based on the same legal theories.'" Waste Management, 128 F. Supp. at 411 (quoting Longden v. Sunderman, 123 F.R.D. 547, 556 (N.D. Tex. 1988)). See also Switzenbaum v. Orbital Sciences Corp., 187 F.R.D. at 251 (the NYC Funds appointed lead plaintiff, having been found to satisfy Rule 23 requirements).

Here, the NYC Funds (a) purchased Enron securities during the class period at prices alleged to have been artificially inflated by the false and misleading financial statements issued by defendants; and (b) were damaged by the alleged fraud. Thus, their claims meet the typicality requirement, since questions of liability are common to all class members. See In re Cendant Corp. Litig., 182 F.R.D. 144, 148 (D.N.J. 1998) ("what matters here is that the claims of every member or constituent group of the putative class arise from the same false or allegedly false representations").

While Rule 23(a) does not require that the lead plaintiff share every factual and legal predicate with other class members to satisfy the typicality standard, In re Cendant Corporation Litig., 182 F.R.D. at 148, there is a well-defined community of interest in the questions of law and fact involved in this case.[10] The NYC Funds claim, as does each Class member, that certain of Enron's officers and directors and Andersen violated the securities laws by publicly disseminating false and misleading statements about Enron's financial condition during the class period. The NYC Funds purchased, as did each Class member, Enron securities at prices inflated by defendants' misrepresentations and omissions, and were damaged thereby. Typicality exists here because the claims asserted by the NYC Funds are based on the same legal theory and arise "from the same event or course of conduct giving rise to the claims of other class members." Waste Management, 128 F. Supp. 2d at 411.

The interests of the NYC Funds are clearly aligned with the members of the proposed Class and there is no antagonism between the interests of those individuals and the proposed Class members.[11] As detailed above, the claims of the NYC Funds raise substantially identical questions of law and fact as those of the proposed Class. Its claims are therefore typical of the

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[10] The questions of law and fact common to the members of the Class that predominate over questions that may affect individual Class members include the following: (1) whether the federal securities laws were violated by defendants; (2) whether defendants misrepresented material facts; (3) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; (4) whether defendants acted with scienter; (5) whether the market price of Enron securities was artificially inflated during the Class Period; and (6) the extent of damage sustained by Class members and the appropriate measure of damages.

[11] See Waste Management, 128 F. Supp. 2d at 414; Gluck v. CellStar Corp., 976 F. Supp. 542, 544 (N.D. Tex. 1997) (claims of the presumptively most adequate plaintiff were typical of those of the purported class members); Lax v. First Merchants Acceptance Corp., No. 97 C 2716, 1997 U.S. Dist. LEXIS 12432, at *20 (N.D. Ill. Aug. 15, 1997); In re Oxford Health Plans Sec. Litig., 182 F.R.D. 42, 49-50 (S.D.N.Y. 1998).

claims of the Class.

The NYC Funds are also an adequate representative of the Class. It is well established that the "adequacy" requirement of Rule 23 is measured by a two-prong test. The moving party must show that the plaintiff's attorneys have the experience and ability to conduct the litigation, and that the plaintiff does not have interests antagonistic to those of the Class. Longden v. Sunderman, 123 F.R.D. at 559; McKnight v. Circuit City Stores, C.A. No. 3:95CV964, 1996 U.S. Dist. LEXIS 11616 at *15 (E.D. Va. April 30, 1996), cert. denied, 531 U.S. 822 (2000) ("The adequacy of representation requirement incorporates two criteria: (1) the named plaintiffs must not have interests that are antagonistic to those of the putative class members and (2) the court must find that the class would [be] represented by qualified counsel who will vigorously prosecute the action."). The NYC Funds have indicated that they will protect the interests of the Class, as reflected in their certifications and supporting declarations affirming their interest in participating as Lead Plaintiff in these actions. The NYC Funds have also retained counsel with considerable experience in the prosecution of class action and federal securities law claims.

B. The Court Should Approve The NYC Funds' Choice of Counsel

The PSLRA provides for the Lead Plaintiff, subject to Court approval, to select and retain counsel to represent the Class. § 21D(a)(3)(B)(v). See Waste Management, 128 F. Supp. 2d at 411. The NYC Funds have selected and retained Lowey Dannenberg and Lieff Cabraser as Lead Counsel. See Conason Decl. ¶¶ 13-16. This retention included the negotiation of a schedule for the payment of attorneys' fees that are far less than fees typically awarded in securities fraud class action litigation. Taylor Decl. ¶18. Lowey Dannenberg and Lieff Cabraser are among the preeminent plaintiffs' class action law firms, having taken leading roles in numerous important

actions on behalf of defrauded investors. See counsel resumes, Exh. A and B to Selinger Decl. [12] They have been recognized recently as appropriate lead counsel in cases brought since the passage of the PSLRA, including post-PSLRA appointments in In re MedPartners Securities Litigation, No. CV-98-B-0067-S (N.D. Ala.) (representing the Denver Employees Retirement Plan); Di Rienzo v. Philip Services Corp., 232 F.3d 49 (2d Cir. 2000); Winn v. Symons Int'l Group, Inc., IP 00-0310C-B/S (S.D. Ind.); LLOV Partners v. Inco Limited, Civil Action No. 00-4999 (NHP (D.N.J.); In re United Healthcare Securities Litigation, No. 98-1888 (JMR/FLN) (D. Minn); In re Crystallex International Corp. Securities Class Action Litigation, No. CV-98-4810 (JM) (S.D.N.Y.); In re Cinar Securities Litigation, No. CV 00 1086 (E.D.N.Y.)(representing The Kaufmann Fund, a multi-billion dollar mutual fund, as lead plaintiff); In re Network Associates, Inc. Securities Litigation, C99-01729 (N.D. Cal.); and In re Transmedia Corp. Securities Litigation, No. CV-02450 WHA (N.D. Cal.).

Accordingly, the Court should approve the NYC Funds' selection of Lead Counsel.

CONCLUSION

For the foregoing reasons, the NYC Funds respectfully request that the Court (i) appoint the NYC Funds to serve as Lead Plaintiff in these actions; (ii) approve the NYC Funds' selection

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12/ Lowey Dannenberg and Lieff Cabraser have associated themselves with the Houston law firm of Hill, Parker & Roberson LLP which will act as their local counsel. Charles R. Parker of the Hill Parker firm has been designated as the Attorney-in-Charge.

of Lead Counsel; and (iii) grant such other relief as the Court may deem just and proper.

Dated: December 21, 2001

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the F.R.C.P., I hereby certify that a true and correct copy of the above and foregoing document was served on all counsel of record by First Class, United States mail, on this the 21st day of December, 2001, as follows:

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ENRON
SUMMARY OF NYC FUNDS DAMAGES

FUND	# SHARES PURCHASED	STOCK LOSS	PRINCIPAL AMT OF BONDS PURCHASED	BOND LOSS	TOTAL LOSS
BERS	31,017	$1,534,101.54	0	$0.00	**$1,534,101.54**
FFVSF	12,500	$780,848.73	415,000	$308,167.04	**$1,089,015.77**
FDPF	221,928	$13,206,556.89	1,480,000	$1,097,053.50	**$14,303,610.39**
FOVSF	1,000	$53,164.25	0	$0.00	**$53,164.25**
NYCERS	471,993	$26,998,153.41	16,295,000	$12,351,437.60	**$39,349,591.01**
PDPF	343,700	$22,913,465.54	6,200,000	$4,653,125.05	**$27,566,590.59**
POVSF	5,100	$260,078.19	835,000	$617,538.34	**$877,616.53**
PSOVSF	1,500	$90,332.70	960,000	$710,108.88	**$800,441.58**
NYCTRS	170,000	$7,533,759.88	8,350,000	$6,217,593.84	**$13,751,353.72**
NYCTRS VAR A	1,192,177	$10,122,323.00	0	$0.00	**$10,122,323.00**
TOTALS	2,450,915	**$83,492,784.13**	34,535,000	**$25,955,024.25**	**$109,447,808.38**

SCHEDULE A

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